## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS LUFKIN DIVISION

JIMMIE FOXWORTH	§	
v.	§	CIVIL ACTION NO. 9:09ev56
DIRECTOR, TDCJ-CID	§	

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE AND ADMINISTRATIVELY CLOSING CASE

The Petitioner Jimmie Foxworth, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Foxworth has filed a motion to stay the present proceeding, stating that his state habeas petition was remanded for a new punishment hearing. The Respondent has voiced no objection to a stay, citing Rhines v. Weber, 125 S.Ct. 1528 (2005), which held that a district court has discretion to stay a mixed petition to allow the petitioner to present unexhausted claims to the state court.

After review of the pleadings, the Magistrate Judge issued a Report on January 20, 2010, recommending that the Petitioner's motion for a stay be granted and that the petition be administratively closed and placed on an inactive docket for administrative and statistical purposes. The Magistrate Judge also recommended that the case could be reopened at such time as the Petitioner or the Respondent notifies the Court that the conviction has become final and all state remedies have been exhausted, and that the federal petition is ready to proceed.

Copies of the Magistrate Judge's Report have been sent to the parties, return receipt requested, but no objections have been received; accordingly, the parties are barred from *de novo* 

review by the district judge of those findings, conclusions and recommendations and, except upon

grounds of plain error, from appellate review of the unobjected-to factual findings and legal

conclusions accepted and adopted by the district court. Douglass v. United Services Automobile

Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge.

Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is

accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the

District Court. It is further

ORDERED that the above-styled civil action be and hereby is administratively closed and

placed on an inactive docket for administrative and statistical purposes. The case shall be reopened

at such time as the Petitioner or the Respondent notifies the Court that the conviction has become

final and all state remedies have been exhausted, and that the federal petition is ready to proceed. The

administrative closing of this case shall have no effect upon the substantive rights of any party to this

case, either at the present time or at such time as the case is reopened.

So ORDERED and SIGNED this 12 day of March, 2010.

Ron Clark, United States District Judge

Rom Clark

2